

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
ON1DESIGN LLC,) OTA NO. 230613620
)
)
APPELLANT.)
)
)
_____)

TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Friday, February 23, 2024

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:36 a.m. and concluding at 9:50 a.m. on
Friday, February 23, 2024, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Administrative Law Judge: JUDGE MIKE LE

For the Appellant: GREGORY CSIKOS

For the Respondent: STATE OF CALIFORNIA
FRANCHISE TAX BOARD

DAVID MURADYAN
NANCY PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibit 1 was received into evidence at the Prehearing Conference.)

(Appellant's Exhibits 2-4 was received into evidence at page 8.)

(Department's Exhibits A-G was received into evidence at the Prehearing Conference.)

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California; Friday, February 23, 2024

9:36 a.m.

JUDGE LE: We are opening the record in the
Appeal of OnlDesign, LLC.

This matter is being held before the Office of
Tax Appeals. The OTA Case Number is 230613620. Today's
date is Friday, February 23, 2024. The time is 9:36 a.m.
This hearing is being conducted electronically with the
agreement of the parties.

I am Administrative Law Judge Mike Le, and I will
be hearing and deciding this case.

For the record, will the parties please state
their names, starting with Respondent Franchise Tax Board.

MR. MURADYAN: Hello. This is David Muradyan,
and I represent the Franchise Tax Board.

JUDGE LE: Thank you.

MS. PARKER: Good morning. I'm Nancy Parker. I
also represent the Franchise Tax Board.

JUDGE LE: Thank you.

This is Judge Le. And for Appellant.

MR. CSIKOS: Yup. Good afternoon. I'm Gregory
Csikos, and I represent OnlDesign.

JUDGE LE: Thank you.

Thank you everyone for the introductions.

1 Let's move on to my minutes and orders. As
2 discussed and agreed upon by the parties at the prehearing
3 conference on January 29, 2024, and noted in my minutes
4 and orders, the issue in this matter is whether Appellant
5 has demonstrated reasonable cause to abate the late-filing
6 penalty.

7 Mr. Gregory Csikos will testify as a witness at
8 this oral hearing.

9 Appellant's Exhibit 1 was entered into the record
10 in my minutes and orders. Respondent's Exhibits A through
11 G were also entered into the record in my minutes and
12 orders. After the prehearing conference Appellant
13 submitted three additional exhibits on February 1st, 2024.

14 Let me first check with Respondent here.

15 Respondent Franchise Tax Board, did you receive
16 Appellant's three additional exhibits?

17 MR. MURADYAN: This is David Muradyan. Yes, we
18 received them, and we have no objections.

19 JUDGE LE: No objections. Okay. In that case, I
20 will admit Appellant's three additional exhibits into the
21 record as Exhibits 2 through 4.

22 (Appellant's Exhibits 2-4 were received
23 in evidence by the Administrative Law Judge.)

24 JUDGE LE: Does anyone have any questions before
25 we begin with Appellant's presentation and witness

1 testimony?

2 Franchise Tax Board, any additional questions or
3 comments?

4 MR. MURADYAN: No.

5 JUDGE LE: Okay. And turning to Appellant, any
6 questions before we begin with your presentation and
7 testimony?

8 MR. CSIKOS: No.

9 JUDGE LE: This is Judge Le. Thank you. So at
10 this point, I'm now going to swear you in.

11 MR. CSIKOS: Actually just one quick question. I
12 just realized in terms of the phrasing of this, the first
13 would just be testimony and the second part would be
14 argumentation? Should I just make it clear which part is
15 which?

16 JUDGE LE: You can, or you can also -- what I'm
17 going to do is I'm going to swear you in before you talk,
18 and you can present both at the same time if you want.

19 MR. CSIKOS: Okay.

20 JUDGE LE: Thank you. So Mr. Gregory Csikos,
21 would you raise your right hand.

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G. CSIKOS,

produced as a witness, and having been first duly sworn by the Administrative Law Judge, was examined, and testified as follows:

JUDGE LE: Thank you. Okay. You have up to 10 minutes for your presentation and testimony, starting at 9:39 a.m. Please proceed.

PRESENTATION

MR. CSIKOS: Okay. So I have been the CPA in preparing the tax returns for On1Design and Justin Gastrich, the owner, since the 2019 tax year. During that time period, I've asked my client with regard to California's LLC return if he was aware of it, and if he had handled it. He said he always had handled it, basically his words, and made the payment. So in June of 2022 -- and as a side note, that is why it wasn't prepared as part of the filings that I did.

So June of 2022 my client received a notice saying that payments have been received for the LLC return, but no returns have been filed. So at that moment we realized that he hadn't actually filed the returns. He just paid the \$800 payment, for which he was aware, and had made that on time, according to his -- his

1 recollection. So at that moment we got the notice, I
2 prepared all three outstanding returns, which were for the
3 2019, 2020, and 2021 tax years. In short order, we filed
4 them immediately.

5 We then also -- well, he also paid any additional
6 tax on those returns because while he was aware of the --
7 not -- I'm sorry -- the \$800 fee -- well, let me actually
8 make it clear -- \$800 tax, the LLC return also has a fee
9 calculation based upon gross receipts in which he wasn't
10 aware of. And so in that regard, there was additional
11 balances owed even after those three returns were filed,
12 but he paid those balances right away. And so ever since
13 then, he's also been compliant with these filings. In
14 fact, we're filing corporate returns because we made an
15 election for his business to be an S corporation.

16 So in many ways this was resolved right away, but
17 my position would be that my client has, you know, made
18 attempts to comply as much as reasonably as possible
19 throughout the period. Even if he didn't file the
20 returns -- and I wasn't aware of that omission -- by
21 making the payment, he demonstrated the good-faith
22 understanding within his bounds of what he needed to do
23 and made, you know, his actions accordingly.

24 So in that context -- so I'm going to switch over
25 to the argumentation period here. I did read the brief

1 from the Franchise Tax Board and, you know, there was a
2 legal memo discussing the requirements for reasonable
3 cause. And in that context, there might be some
4 strictures that weren't met from the Franchise Tax Board's
5 argument. But my counter argument here would be that the
6 decision here to grant relief, and that's where I cited
7 the California Government Code.

8 I understand that the Administrative Law Judge
9 would make a decision based on legal reasons. And that
10 context would be not just the statute but also including
11 the common law and principles of equity, which all of
12 them -- all the three of them, actually, are under our
13 legal system. So the law doesn't just purely focus on the
14 statute. It'll incorporate further principles. And
15 within that context, sort of -- as sort of more basic
16 principles, from the common law, we have the concept that
17 the law disregards trifles that, essentially, in the
18 greater scheme of things that it wouldn't prudent for laws
19 to be enforced to such small degrees.

20 And in this case, the appeal is over a \$625 fine,
21 and in that regard one would hope that it would be viewed
22 that way. And also the law -- and these are principles of
23 equity. Now, they've been codified in California's Civil
24 Code but, again, they're coming from other sources, which
25 are beyond the Civil Code. The Civil Code, of course,

1 handles relations between private persons, but these go
2 beyond just the Civil Code.

3 The other principle is sort of, you know,
4 nonstatutory ideas here. Again, from equity we have the
5 concepts of the law helps the vigilant, and the law
6 respects form less than substance. And so in those, you
7 know, in the context of those principles, I'd say my
8 client has attempted to comply, made all -- to his -- to
9 his knowledge, made all reasonable steps to comply. And
10 that because he, you know, he didn't realize something was
11 omitted and our discussions didn't dive into the degree to
12 which I would actually know something was omitted, he
13 didn't comply. However, I think that noncompliance would
14 be forgivable within, again, just the general framework of
15 how the law should operate.

16 And so that basically concludes my argument.

17 JUDGE LE: Thank you. This is Judge Le. Thank
18 you for your presentation and testimony.

19 Let me turn to the Respondent Franchise Tax Board
20 to see if they have any questions for the witness.

21 MR. MURADYAN: No questions.

22 JUDGE LE: Thank you. This is Judge Le.

23 Let me ask one clarifying question here. I think
24 you said that your client told you that the return was
25 filed, but it turns out that it wasn't; is that correct?

MR. CSIKOS: Not exactly. So when I asked him about the LLC return, he said, "Oh, I handled that and made the payment."

I didn't realize at the time that really meant he didn't file it. He just made the payment. He wasn't aware that a return, you know, of the nature that's actually required was required to be filed. He just -- you know, he just thought the submission of the payment was sufficient.

But I didn't realize at the time that when he said, "I handled it," that he didn't really mean he filed the return. So, you know, there's a gap there. But -- but he was aware of the fee, and he would remit it timely. And that's why he eventually got the notice saying that, "We have payments, but we don't have returns." Yeah.

JUDGE LE: This is Judge Le. Thank you for you
answering my question.

At this time, let's turn to Respondent Franchise Tax Board. It is now your turn for your presentation. You have up to ten minutes starting at 9:46 a.m.

PRESENTATION

MR. MURADYAN: Good morning, my name is David Muradyan, and also on appeal with me, with the Franchise Tax Board, is my colleague Nancy Parker.

1 The sole issue in this case is whether Appellant
2 has demonstrated reasonable cause to justify abatement of
3 the delinquent filing penalty imposed under Revenue &
4 Taxation Code section 19131 for the 2020 tax year. The
5 Appellant is an LLC registered with the California
6 Secretary of State and filed its return late on
7 June 30th, 2022. FTB processed Appellant's return and
8 assessed a delinquent filing penalty. Ultimately,
9 Appellant submitted a claim for refund, which FTB denied.
10 Appellant then filed this appeal arguing that it was
11 unaware that it had a filing requirement.

12 Unfortunately, Appellant filed its return, which
13 was due on April 15th, 2021, over a year late on
14 June 30th, 2022. Although Appellant argues that it was
15 unaware that it had a filing requirement, this argument is
16 unpersuasive. Even if the taxpayer is unaware of a filing
17 requirement, ignorance of the law is not an excuse for
18 failing to file a timely return.

19 Moreover, the 2020 instructions on the Form 568
20 explicitly state that the Form 568 must be timely filed by
21 every LLC that is organized in California. Appellant had
22 a filing requirement because it was organized with the
23 State of California and was doing business in California
24 but failed to timely do so.

25 In sum, Appellant has not demonstrated that

1 reasonable cause exists to abate the delinquent filing
2 penalty. For these reasons, FTB's denial of Appellant's
3 claim for refund should be sustained.

4 And with that, I'm happy to take any questions.

5 JUDGE LE: This is Judge Le. Thank you,
6 Respondent, for your presentation.

7 Let me now turn it back to Appellant for his
8 rebuttal statement.

9 Appellant, you have up to 5 minutes. You may
10 proceed.

11

12 CLOSING STATEMENT

13 MR. CSIKOS: Okay. Having read the brief and
14 just listening to the presentation of the FTB, it is
15 incumbent on everybody to be knowledgeable of their legal
16 obligations, the law assumes such. I would say that my
17 client's knowledge was imperfect but, yet, he was aware of
18 the obligation existing to pay certain fees for having the
19 LLC. And in that context, again, I would say that his
20 attempts to comply should be credible, as opposed to
21 taking the failure to file the return.

22 Although, again, having made the payment under
23 the mistaken assumption of that being sufficient, that his
24 attempt, again, should, I think, provide a basis for
25 administrative grace in this regard. And that it's -- you

1 know, while it, again, not following the statute or the
2 instructions was negligent, at the same time I think was
3 excusable, again, within the more general principles of
4 how the law operates than, you know, pure adherence to
5 what the statute or the instructions say.

6 JUDGE LE: This is Judge Le. Thank you. Does
7 that conclude your rebuttal statement?

8 MR. CSIKOS: It does.

9 JUDGE LE: Thank you.

10 I have no further questions, so I believe that
11 concludes our hearing for today. Thank you everyone for
12 your presentation.

13 This case is submitted on February 23rd, 2024.
14 The record is now closed.

15 I will decide your case later on, and I will send
16 you a written opinion of my decision within 100 days.

17 Today's hearing in the appeal of OnlDesign, LLC,
18 is now adjourned.

19 Thank you and goodbye.

20 (Proceedings adjourned at 9:50 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyn M. Alonzo, Hearing Reporter in and for
the State of California, do hereby certify:

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
testimony and proceedings were reported stenographically
by me and later transcribed by computer-aided
transcription under my direction and supervision, that the
foregoing is a true record of the testimony and
proceedings taken at that time.

I further certify that I am in no way interested
in the outcome of said action.

I have hereunto subscribed my name this 15th day
of March, 2024.

ERNALYN M. ALONZO
HEARING REPORTER